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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 291

W. A. CANNON, *Petitioner*

v.

NORTH CAROLINA STATE HIGHWAY AND PUBLIC WORKS COMMISSION, *Respondent*

Petitioner's Brief in Reply to Respondent's Brief in Opposition to Petition for Writ of Certiorari

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INDEX

Page No.

Opinions Below 1

Jurisdiction 1

Questions Presented 2

Laws Involved 2

Statement 2

Argument 3

I. Whether Any Federal Question Involved 3

A. Federal Question is involved that private property has been appropriated to public use without just compensation and without due process of law 3

B. Federal question is involved that N. C. courts refusal to entertain Petitioner's actions to enforce his Constitutional rights denies him equal protection of the laws 5

C. Federal question is involved that Petitioner is denied any remedy to enforce his Constitutional rights 6

D. Federal question is involved that Petitioner has been denied due process of law by the decision of the N. C. courts and the acts of the Respondent 7

II. Whether There Has Been a Final Judgment 9

A. Proceeding for mandamus "instituted" 9

Comment on Respondent's citations 11

B. The judgment is final 12

Conclusion 14

TABLE OF CITATIONS

American Exp. Co. v. *Michigan (American Exp. Co.* v. *Maynard)*
177 U.S. 404, 44 L. Ed. 823, 20 Sup.Ct.Rep. 695 13

Angel v. *Bullington*, N.C.1947
330 U.S. 183, 91 L. Ed. 832, 67 S.Ct. 657 ..... 7, 8

Atchison T. & S. F. R. Co. v. *Public Utilities Commission of California*, Cal.1953, 346 U.S. 346, 98 L. Ed. 51, 74 S.Ct. 97 10

Backus v. *Fort Street Union Depot Co.*, Mich.1898
169 U.S. 557, 42 L. Ed. 853, 18 S.Ct. 445 ..... 3, 4, 5, 6

Baltimore & Potomac R. Co. v. *Hopkins*, Dist.Col.1889
130 U.S. 210, 32 L.Ed. 908, 9 S.Ct. 503 3

Bandini Petroleum Co. v. *Superior Court*, Cal.1931
284 U.S. 8, 76 L. Ed. 136, 52 S.Ct. 103 ..... 10, 11

Page No.

Bear v. *Commissioners* (1899)
124 N.C. 204, 32 S.E. 558 11

Boyd v. *Thayer*
143 U.S. 135 9

Broderick v. *Rosner*
294 U.S. 629, 55 S.Ct. 589, 79 L. Ed. 1100, 100 A.L.R. 1133 .. 7

Cannon v. *City of Wilmington, N.C., & N. C. State Highway & Public Works Commission* (1955)
242 N.C. 711, 89 S.E. 2d 595 ..... 2, 6

Casualty Co. v. *Commissioners of Saluda* (1938)
214 N.C. 235, 199 S.E. 7 11

Central Transp. Co. v. *Pullman's Car Co.*
139 U.S. 24, 35 L. Ed. 55, 11 Sup.Ct.Rep. 478 13

Cherokee Nation v. *Southern Kansas Railway*
135 U.S. 641, 34 L. Ed. 295 5

Chicago & E. I. R. Co. v. *Industrial Commission*, Ill.1932
285 U.S. 296, 76 L. Ed. 304, 52 S.Ct. 151 ..... 9-10, 10, 11, 13

Chicago, Burlington, & Q. R. Co. v. *Chicago*, Ill. 1897
166 U.S. 226, 41 L. Ed. 979, 17 S.Ct. 581 ..... 4, 6, 8

Davies v. *Corbin*
112 U.S. 36, 28 L. Ed. 627, 5 Sup.Ct.Rep. 4 13

Davis v. *Wechler*
263 U.S. 22, 44 S.Ct. 13, 68 L. Ed. 143 8

Detroit & Mackinac R. Co. v. *Michigan Railroad Commission*, Mich.1916, 240 U.S. 564, 60 L. Ed. 802, 36 S.Ct. 424 .. 9, 11, 13

General Oil Co. v. *Crain*, Tenn.1908
209 U.S. 211, 52 L. Ed. 754, 28 S.Ct. 475 ..... 4, 5, 6, 11, 13

Hammerstein v. *Superior Court*, Cal.1951
341 U.S. 491, 95 L. Ed. 1135, 71 S.Ct. 820 ..... 10, 11, 14

Hartman v. *Greenhow*
102 U. S. 672 9

Hospital v. *Wilmington*, (1952)
235 N.C. 597, 70 S.E. 2d 833 12

Indiana ex rel. Anderson v. *Brand*, Ind.1938
303 U.S. 95, 82 L. Ed. 685, 58 S.Ct. 443, 113 A.L.R. 1482, rehearing denied 303 U.S. 667, 82 L. Ed. 1123, 58 S.Ct. 641 ..... 4, 9, 13, 14

Kenney v. *Supreme Lodge*
252 U.S. 411, 40 S.Ct. 371, 64 L. Ed. 638, 10 A.L.R. 716 7

LaCrosse Tel. Corp. v. *Wisconsin Employment Relations Board*, Wisc. 1949, 336 U.S. 18, ... L. Ed. ...., 69 S.Ct. 379 10

Page No.

Madruga v. *Superior Court*, Cal.1954
346 U.S. 556, 98 L. Ed. 290, 74 S.Ct. 298 ..... 10, 14

McKinney v. *Deneen* (1950)
231 N.C. 540, 58 S.E. 2d 107 8

McKnett v. *St. Louis & S. F. R. Co.*
292 U.S. 230, 54 S.Ct. 690, 78 L. Ed. 1277 7

McPherson v. *Blackmer*, Mich.1892.
146 U.S. 1, 36 L. Ed. 969, 13 S.Ct. 3 ..... 9, 13

Michigan Central R. Co. v. *Mix*, Mo.1929
278 U.S. 492, 73 L. Ed. 470, 49 S.Ct. 207 ..... 10, 11, 13

Miller v. *Cornwall R. Co.*, Pa.1897
168 U.S. 131, 42 L.Ed. 409, 18 S.Ct. 34 ..... 3, 4

Missouri v. *Taylor*, Mo.1924
266 U.S. 200, 69 L. Ed. 247, 45 S.Ct. 47 ..... 10, 13

Mt. Vernon-Woodberry Cotton Duck Co. v. *Alabama Interstate Power Co.*, Ala.1916
240 U.S. 30, 60 L. Ed. 507, 36 S.Ct. 234 ..... 10, 13

Mower v. *Fletcher*, Cal.1885
114 U.S. 127, 29 L. Ed. 117, 5 S.Ct. 799 12

Myles Salt Co. v. *Board of Commissioners*, La.1916
239 U.S. 478, 60 L. Ed. 392, 36 S.Ct. 204 ..... 3, 4

Norris v. *Alabama*
294 U.S. 587, 79 L. Ed. 1074, 55 S.Ct. 579 6

Palmer v. *Ashe*, Pa.1951
342 U.S. 134, 96 L. Ed. 154, 72 S.Ct. 191 ..... 9, 10, 14

Parker v. *People of State of Illinois*, Ill.1948
333 U.S. 571, 92 L. Ed. 886, 68 S.Ct. 708 10

Pope v. *Atlantic Coast Line R. Co.*, Ga.1953
345 U.S. 379, 97 L. Ed. 1094, 73 S.Ct. 749 ..... 3, 14

Rescue Army v. *Municipal Court of City of Los Angeles*,
Cal 1947, 331 U.S. 549, 91 L. Ed. 1666, 67 S.Ct. 1409 ..... 10, 14

Sweet v. *Rechel*
159 U.S. 380, 40 L. Ed. 188 5

Titus v. *Wallick*
306 U.S. 282, 59 S.Ct. 557, 83 L. Ed. 653 7

Tregea v. *Modesto Irrigation District*, Cal.1896
164 U.S. 179, 41 L. Ed. 395, 17 S.Ct. 52 ..... 3, 4

Walkinson v. *State of Pennsylvania*, D.C.Pa.1954
119 F.Supp. 722 10

Weston v. *City Council of Charleston*, S.C.1829
2 Pet. 449, 27 U.S. 449, 7 L. Ed. 481 ..... 10, 13

Page No.

White v. *Hart*,
13 Wall. 646, 20 L. Ed. 685 ... 7

Wilkinson v. *Board of Education*, (1930)
199 N.C. 669, 155 S. E. 562 ... 12

Williams v. *North Carolina*, N.C.1945
325 U.S. 226, 89 L. Ed. 1577, 65 S.Ct. 1092, 157 A.L.R. 1366, reahearing denied 325 U.S. 895, 89 L. Ed. 2006, 65 S.Ct. 1560 ... 6

Wilmington & W. R. Co. v. *Alsbrook*, N.C.1892
146 U.S. 279, 36 L. Ed. 972, 13 Sup.Ct.Rep. 72 ... 6, 12

Young v. *Ragen*, Ill.1949
337 U.S. 235, 93 L. Ed. 1333, 69 S.Ct. 1073 ... 6, 9, 10, 14

The Constitution of the United States of America

Article I, § 10, The Contract Clause ... 7

Article IV, § 1, The Full Faith and Credit Clause ... 7

Article IV, § 2, The Privileges or Immunities Clause ... 7

11th Amendment ... 5

14th Amendment ... 1, 5, 8

14th Amendment, § 1 ... 3, 12

Federal Statutes

28 U.S.C. § 1257 ... 10

28 U.S.C. § 1257, Annotation 4 ... 10

28 U.S.C. § 1257 (3) ... 1

The Constitution of the State of North Carolina

Article I, § 17 ... 8

North Carolina General Statutes

§ 1-512 ... 11

§ 136-19 ... 3, 12

Broom, *Constitutional Law* ... 8

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OPINIONS BELOW

Since they are set forth in the Petition for Writ of Certiorari, they are not here repeated.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C., § 1257(3) for a Writ of Certiorari to the Supreme Court of North Carolina, on the ground that Federal questions are presented that the acts of the Resondent, in depriving Petitioner of his private property for public use without either just compensation or due process of law, and that the acts of the North Carolina Courts, in refusing to entertain jurisdiction of his civil actions against Respondent, deprive Petitioner of due process of law and equal protection of the laws and deny Petitioner a remedy to enforce his Constitutional rights, all in violation of the 14th Amendment to the Constitution of the United States.

QUESTIONS PRESENTED

I. Whether any Federal Question is involved.

II. Whether there has been a final judgment of a North Carolina Court of last resort denying Petitioner's Claims of denial of his Constitutional Rights.

LAWS INVOLVED

Since they are the same as set forth in the original Petition and in Respondent's Brief, they are not here repeated.

STATEMENT

Since it would be the same as is in the original Petition and in Respondent's Brief, it is not here repeated, but the following is added.

The appendix to Respondent's Brief is not a part of the record in this case. The first time Petitioner or his attorneys have seen that letter is its appearence as Appendix to Respondent's Brief. It is to be noted that it pertains to a different case *(Cannon v. City of Wilmington and North Carolina State Highway and Public Works Commission)* than the one now before this Court *(Cannon* v. *North Carolina State Highway & Public Works Commission)*. Therefore, it has no place in the instant case.

ARGUMENT

In this Brief we are not repeating the matters set forth and discussed in our original Brief and Petition for Writ of Certiorari; but will merely reply to Respondent's opposition to our Petition.

I. Whether Any Federal Question Is Involved.

A. The entire subject matter of this case consists of the Petitioner's claims that the acts of Respondent, in claiming a part of Petitioner's private property (lands) for public use as a highway right-of-way without paying any compensation whatsoever and without any process of law (any suit, action, proceeding, or otherwise) and without Petitioner's consent, violate Petition-

er's Constitutional rights, as set forth in the United States Constitution, especially § 1 of the 14th Amendment thereto. This involves a Federal question. *Tregea* v. *Modesto Irrigation District*, Cal.1896, 164 U.S. 179, 41 L. Ed. 395, 17 S.Ct. 52; *Backus* v. *Fort Street Union Depot Company*, Mich. 1898, 169 U.S. 557, 42 L. Ed. 853, 18 S.Ct. 445; *Pope* v. *Atlantic Coast Line R. Co.*, Ga.1953, 345 U.S. 379, 97 L. Ed. 1094, 73 S.Ct. 749.

If, under the statute, N.C.G.S. § 136-19, the acts of the Resondent are authorized by its terms and, therefore, legitimate exercise of Respondent's powers and duties, the statute provides for a taking of private property by the State of North Carolina without either due process of law or the payment of just compensation. *Backus* v. *Fort Street Union Depot Co.*, Mich.1898, 169 U.S. 557, 568, 42 L. Ed. 853, 858-859, 18 S.Ct. 445; *Myles Salt Co.* v. *Board of Commissioners*, La.1916, 239 U.S. 478, 484, 60 L. Ed. 392, 396, 36 S.Ct. 204.

If, under the statute, N.C.G.S. § 136-19, (Petition for Certiorari, Appendix A, pages 14-17), the acts of the Respondent are not authorized by its terms, but are read into it by the Respondent by construction, that construction makes the act invalid as appropriation of private property, for public use without either due process of law or the payment of just compensation.

Baltimore & Potomac R. Co. v. *Hopkins*, Dist. Col. 1889, 130 U.S. 210, 224, 32 L. Ed. 908, 913, 9 S.Ct. 503; *Miller* v. *Cornwall R. Co.*, Pa.1897, 168 U.S. 131, 133, 42 L. Ed. 409, 410, 18 S.Ct. 34: "The validity of a statute is drawn in question whenever the power to enact it, as it is by its terms, or is made to read by construction, is fairly open to denial and is denied."

> ". . . the law of the state as written is not attacked, but the law as administered and justified by the Supreme Court of the State is attacked, and it is asserted to be a violation of the Constitution of the United States. The question presented is Federal . . ." *Myles Salt Co.* v. *Board of Commissioners*, supra.

In the instant case Petitioner, in his complaint, alleges that the acts or the Respondent in claiming, without the owner's consent, highway rights-of-way over private property without either deed or condemnation or any attempt to acquire title to such rights-of-way and without any attempt to pay just compensation, offend the provisions of the Federal Constitution. Petitioner contends that, because such acts are not authorized by the statutes and constitute failure on the part of Respondent to perform its duties, Petitioner is entitled to a writ of mandamus to force Respondent to perform its functions and duties properly and in accordance with the Federal Constitution, as well as the statutes. These allegations deny the validity of the statute as it "is made to read by construction." *Miller* v. *Cornwall R. Co.*, supra; *Tregea* v. *Modesto Irrigation District*, supra; *Chicago, B. & Q. R. Co.* v. *Chicago*, Ill.1897, 166 U.S. 226, 41 L. Ed. 979, 17 S.Ct. 581; *Myles Salt Co.* v. *Board of Commissioners*, supra.

Petitioner contends that the statute does not make adequate provision to secure the payment of that just compensation required by the Federal Constitution, in that it allows Respondent to go into possession of private property *prior* to the condemnation proceedings, instead of after they are instituted and while they are pending. *General Oil Co.* v. *Crain*, Tenn.1908, 209 U.S. 211, 228, 52 L. Ed. 754, 764, 28 S.Ct. 475; *Backus* v. *Fort Street Union Depot Co.*, supra; *Indiana ex rel. Anderson* v. *Brand*, Ind.1938, 303 U.S. 95, 82 L. Ed. 685, 58 S.Ct. 443, 113 A.L.R. 1482, rehearing denied 303 U.S. 667, 82 L. Ed. 1123, 58 S.Ct. 641.

Respondent has construed that provision of the statutes to give it the right to go into possession of private property without either the consent of the owner, any process of law, or the payment of just compensation, or securing the payment thereof and to take the property from its owner and vest ownership thereof in Respon-

dent so as to require the owner, if he is to have any, to institute proceedings for just compensation within either six or twelve months after completion of the project and that the owner's "just compensation" be reduced by any special benefits to the property by the construction or improvement of the highway which requires the appropriation of the private property. Petitioner challenges the validity thereof, as being offensive to the protections set forth in the U. S. Constitution. *Backus* v. *Fort Street Union Depot Co.*, supra; *Cherokee Nation* v. *Southern Kansas Railway*, 135 U.S. 641, 34 L. Ed. 295; *Sweet* v. *Rechel*, 159 U.S. 380, 40 L. Ed. 188.

B. Petitioner says that a federal question is presented as to whether his right to equal protection of the laws is denied by the refusal of the North Carolina Courts to entertain jurisdiction of his civil actions for relief from Respondent's claims against Petitioner's lands.

General Oil Co. v. *Crain*, Tenn.1908, 209 U.S. 211, 225-226, 52 L. Ed. 754, 763-764, 28 S.Ct. 475:

> "Necessarily, to give adequate protection to constitutional rights a distinction must be made between valid and invalid state laws, as determining the character of the suit against state officers and the suit at bar illustrates the necessity. If a suit against state officers is precluded in the national courts by the 11th Amendment to the Constitution, and may be forbidden by a state to its courts, as it is contended in the case at bar that it may be, without power of review by this court, it must be evident that an easy way is open to prevent the enforcement of many provisions of the Constitution; and the 14th Amendment, which is directed at state action, could be nullified as to much of its operation."

And, at page 228 in 209 U.S. and page 764 in 52 L. Ed., this Court said, in the same case:

> "It being, then, the right of a party to be protected against a law which violates a constitutional right, whether by its terms or the manner of its en-

forcement, it is manifest that a decision which denies such protection gives effect to the law, and the decision is reviewable by this court. Wilmington & W. R. Co. v. Alsbrook, 146 U.S. 279, 36 L. ed. 972, 13 Sup. Ct. Rep. 72."

Petitioner is not afforded any protection for his constitutional rights. In *Cannon* v. *City*, the North Carolina Supreme Court refused to allow the action to remove from Petitioner's lands the clouds on title created by the acts of Respondent. In the instant case the North Carolina Supreme Court refused to entertain the action. Petitioner knows not where to turn.

> "It is not simply a question of state procedure when a state court of last resort closes the door to *any* consideration of a claim of denial of a federal right. *Young* v. *Ragen*, Ill.1949, 337 U.S. 235, 238, 93 L. Ed. 1333, 1336, 69 S.Ct. 1073, 1074.
>
> "It is also not open to further debate, since the decision in Chicago, Burlington, & Q. Railroad Co. v. Chicago, 166 U.S. 226 (41:979) that this court may examine proceedings had in a state court, under state authority, for the appropriation of private property to public purposes, so far as to inquire whether that court prescribed any rule of law in disregard of the owner's right to just compensation." *Backus* v. *Fort Street Union Depot Co.*, Mich.1898, 169 U.S. 557, 565, 42 L. Ed. 853, 857, 18 S.Ct. 445.

C. That Petitioner is denied *any* remedy for the protection of his constitutional rights is a federal question. Twice the North Carolina of last resort has refused to entertain actions against Respondent to adjudicate Peitioner's federal rights. *General Oil Co.* v. *Crain*, supra.

> "State courts cannot avoid review by this Court of their disposition of a constitutional claim by casting it in the form of an unreviewable finding of fact. Norris v. Alabama, 294 U.S. 587, 590, 79 L. ed. 1074, 55 S.Ct. 579." *Williams* v. *North Carolina*, N.C.1945, 325 U.S. 226, 236, 89 L. Ed. 1577,

1585, 65 S.Ct. 1092, 157 A.L.R. 1366, rehearing denied 325 U.S. 895, 89 L. Ed. 2006, 65 S.Ct. 1560.

"When an asserted federal right is denied, the sufficiency of the grounds of denial is for this Court to decide. Titus v. Wallick, 306 U.S. 282, 291, 59 S.Ct. 557, 83 L. Ed. 653." *Angel* v. *Bullington*, N.C. 1947, 330 U.S. 183, 189, 67 S.Ct. 657, 660, 91 L. Ed. 832.

D. It is a federal question whether Petitioner has been denied due process of law by the acts of the Respondent and the decisions of the North Carolina courts. In the two cases the North Carolina courts have turned deaf ears to Petitioner's assertions of constitutional claims and refused to take jurisdiction of them.

" 'The power of a state to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution.' McKnett v. St. Louis & S. F. R. Co., 292 U.S. 230, 233, 54 S.Ct. 690, 691, 78 L. Ed. 1277. The Contract Clause, U. S. Const., Art. 1, § 10, the Full Faith and Credit Clause, U.S. Const., art. 4, § 1, the Privileges or Immunities Clause, U. S. Const., art. 4, § 2, all fetter the freedom of a State to deny access to its courts howsoever much it may regard such withdrawal of jurisdiction 'the adjective law of the State', or the exercise of its right to regulate 'the practice and procedure' of its courts. Broderick v. Rosner, 294 U.S. 629, 642, 55 S.Ct. 589, 592, 79 L. Ed. 1100, 100 A.L.R. 1133. A State 'cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to Courts otherwise competent.' Kenney v. Supreme Lodge, 252 U.S. 411, 415, 40 S.Ct. 371, 372, 64 L. Ed. 638, 10 A.L.R. 716; and see White v. Hart, 13 Wall 646, 20 L. Ed. 685. This pervasive principle of our federal law, constitutional and statutory, was thus put by Mr. Justice Holmes: 'Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, it is not to be defeated under the name of local

practice.' Davis v. Wechler, 263 U.S. 22, 24, 44 S. Ct. 13, 14, 68 L. Ed. 143." *Angel* v. *Bullington*, N.C. 1947, 330 U.S. 183, 188, 67 S.Ct. 657, 660, 91. L. Ed. 832.

In *Chicago, B. & Q. R. Co.* v. *Chicago*, Ill.1897, 166 U.S. 226, 41 L. Ed. 979, 17 S.Ct. 581, this Court said:

166 U.S. at pages 234-235, 41 L. Ed. at page 984:

"But a state may not, by any of its agencies, disregard the prohibitions of the 14th Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard and yet it might be that its final action would be inconsistent with that Amendment. In determining what is due process of law regard must be had to substance, not to form."

166 U.S. at pages 235-236, 41 L. Ed. at page 984:

"Due protection of the rights of property has been regarded as a vital principle of republican institutions. 'Next in degree to the right of personal liberty." Mr. Broom in his work on Constitutional Law says, 'is that of enjoying private property without undue interference or molestation.' p. 228. The requirement that the property shall not be taken for public use without just compensation is but 'an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down as a principle of universal law. Indeed, in a free government almost all other rights would become worthless if the government possessed an uncontrollable power over the private fortune of every citizen'."

Although the North Carolina Constitution does not contain any provision requiring payment of just compensation, it has been held to be a part of the "law of the land" provision of § 17 of Article I thereof. *McKinney* v. *Deneen*, 231 N.C. 540, 58 S.E. 2d 107(1950). Even so, the North Carolina Courts have closed their doors to Petitioner's claims of rights to just compensation and due process of law.

"But it is not simply a question of state procedure when a state court of last resort closes the door to *any* consideration of a claim of denial of a federal right." *Young* v. *Ragen*, Ill.1949, 337 U. S. 235, 238, 93 L. Ed. 1333, 1336, 69 S.Ct. 1073, 1074.

Thus, Petitioner contends that four—not one—federal questions are involved.

II. Whether There Has Been A Final Judgment Of The North Carolina Court of Last Resort Denying Petitioner's Claims Of Denial Of Constitutional Rights.

A. A proceeding for the issuance of a writ of mandamus was properly "instituted."

Petitioner did all in his power to "institute" the proceeding by filing the papers with the North Carolina Supreme Court for that Court to issue the summons, which application that court of last resort denied by refusing to issue the summons and denying the relief asked.

"But the judicial power of the United States extends to all cases in law or equity arising under the Constitution and laws of the United States, and this is a case so arising, since the validity of the state law was drawn in question as repugnant to such Constitution and laws, and its validity sustained. Boyd. v. Thayer, 143 U.S. 135. And it matters not that the judgment reviewed may be rendered in a proceeding for mandamus. Hartman v. Greenhow, 102 U.S. 672." *McPherson* v. *Blackmer*, Mich.1892, 146 U.S. 1, 24, 36 L. Ed. 969, 13 S.Ct. 3.

This Court granted writs of certiorari where the state courts denied applications for writs of mandamus (*McPherson* v *Blackmer*, supra; *Detroit & Mackinac Ry. Co.* v. *Michigan Railroad Commission*, Mich.1916, 240 U.S. 564, 60 L. Ed. 802, 36 S.Ct. 424; *Indiana ex. rel. Anderson* v. *Brand*, supra), petitions for writs of habeas corpus (*Young* v. *Ragen*, supra, denied without hearing; *Palmer* v. *Ashe*, Pa.1951, 342 U.S. 134, 96 L. Ed. 154, 72 S.Ct. 191, state supreme court refused to allow appeal), writs of review (*Chicago & E. I. R. Co.* v. *Industrial*

Commission, Ill.1932, 285 U.S. 296, 76 L. Ed. 304, 52 S.Ct. 151; *Atchison T. & S.F. R. Co.* v. *Public Utilities Commission of California*, Cal.1953, 346 U.S. 346, 98 L. Ed. 51, 74 S.Ct. 97), applications for writs of prohibition (*Weston* v. *City Council of Charleston*, S.C.1829, 2 Pet. 449, 27 U.S. 449, 7 L. Ed. 481; *Mt. Vernon-Woodberry Cotton Duck Co.* v. *Alabama Interstate Power Co.*, Ala. 1916, 240 U.S. 30, 60 L. Ed. 507, 36 S.Ct. 234; *Missouri* v. *Taylor*, Mo.1924, 266 U.S. 200, 69 L. Ed. 247, 45 S.Ct. 47; *Michigan Cent. R. Co.* v. *Mix*, Mo.1929, 278 U.S. 492, 73 L. Ed. 470, 49 S.Ct. 207; *Bandini Petroleum Co.* v. *Superior Court*, Cal.1931, 284 U.S. 8, 76 L. Ed. 136, 52 S.Ct. 103; *Chicago & E. I. R. Co.* v. *Industrial Commission*, supra; *Rescue Army* v. *Municipal Court of City of Los Angeles*, Cal.1947, 331 U.S. 549, 91 L. Ed. 1666; 67 S.Ct. 1409; *Hammerstein* v. *Superior Court*, Cal.1951, 341 U.S. 491, 95 L. Ed. 1135, 71 S.Ct. 820; *Madruga* v. *Superior Court*, Cal.1954, 346 U.S. 556, 98 L. Ed. 290, 74 S.Ct. 298), refused to review contempt proceedings (*Parker* v. *People of State of Illinois*, Ill.1948, 333 U.S. 571, 92 L. Ed. 886, 68 S.Ct. 708), where "judgment" for review was the certification of a labor union as collective bargaining agent (*LaCrosse Tel. Corp.* v. *Wisconsin Employment Relations Board*, Wis.1949, 336 U.S. 18, __ L. Ed. __, 69 S.Ct. 379. *Walkinson* v. *State of Pennsylvania*, D.C.Pa.1954, 119 F.Supp. 722, is listed under annotation number 4 (page 14 in 1955 Cumulative Annual Pocket Part to Title 28 U.S.C.A. §§ 1251-1330) to 28 U.S.C.A., § 1257, as holding that the proper remedy for a party who claimed his constitutional rights were infringed by revocation of his license to operate motor vehicles is petition for writ of certiorari to review the judgment of the state supreme court sustaining such revocation.

We do not find a case exactly on all fours with the instant case. Analogous ones are listed above, especially *Young* v. *Ragen*, supra, and *Palmer* v. *Ashe*, supra, as

to writs of habeas corpus, and *Michigan Cent. R. Co.* v. *Mix*, supra, *Bandini Petroleum Co.* v. *Superior Court*, supra, *Chicago & E. I. R. Co.* v. *Industrial Commission*, supra, *Hammerstein* v. *Superior Court*, supra, and *Madruga* v. *Superior Court*, supra, as to writs of prohibition. However, it seems clear that the North Carolina Supreme Court assumed enough jurisdiction to render the order which we seek to have reviewed.

If the state court refused to accept the filing of th action and to issue the summons and such is not reviewable, then, as this Court said in *General Oil Co.* v. *Crain*, Tenn.1908, 209 U.S. 211, 226, 52 L. Ed. 754, 764, 28 S.Ct. 475, "it must be evident that an easy way is open to prevent the enforcement of many provisions of the Constitution; and the 14th Amendment, which is directed at state action, could be nullified as to much of its operation . . ."

> ". . . a proceeding in mandamus is an independent adversary suit, and a judgment awarding or refusing the writ is a final judgment within the meaning of the statute." Many cases cited. *Detroit & Mackinac Ry. Co.* v. *Michigan Railroad Commission*, Mich. 1916, 240 U.S. 564, 571, 60 L. Ed. 802, 807, 36 S.Ct. 424.

In its Brief the Respondent failed to give this Court the benefit of the rest of the quotation from *Bear* v. *Commissioners*, (1899) 124 N.C. 204, 207, 32 S.E. 558, 559: ". . . though mandamus is in the nature of an execution, yet it is in the nature of a civil action."

Casualty Co. v. *Commissioners of Saluda*, (1938) 214 N. C. 235, 238, 199 S.E. 7, 9: The statute, General Statutes § 1-512 (formerly C.S. § 867 and Michie's Code 1935, § 867), provides that in mandamus proceedings *to enforce a money demand against counties, cities, towns, or taxing districts* the complaint must show that the demand has been reduced to judgment, in which instances mandamus is the equivalent of execution against

such defendants. The case was one to compel the Board of Commissioners of the City of Saluda to levy tax sufficient to pay judgment on certain tax anticipation notes made by the town.

Respondent's quotations from *Hospital* v. *Wilmington*, (1952) 235 N.C. 597, 601, 70 S.E. 2d 833, 836; and *Wilkinson* v. *Board of Education*, (1930), 199 N.C. 669, 673, 155 S.E. 562, 564, are accurate. In the former case, the North Carolina Supreme Court said: "Mandamus is a writ issuing from a court of competent jurisdiction commanding an inferior tribunal, board, corporation, or person to perform a purely ministerial duty imposed by law."

Petitioner contends that the duty of Respondent to "acquire such rights of way and title to such land . . . either by purchase, donation, or condemnation . . ." (N.C.G.S. § 136-19) is such "ministerial duty imposed by law," and that Petitioner has "a clear legal right to demand it," because by the Respondent's failure to perform such "ministerial duty imposed by law," it denies the Petitioner his property without either just compensation or due process of law, in violation of § 1 of the 14th Amendment to the Consitution of the United States.

B. The North Carolina Supreme Court's judgment is final.

> "That judgment is final for the purpose of a writ of error to this court, which terminates litigation between the parties . . ." *Mower* v. *Fletcher*, Cal.1885, 114 U.S. 127, 128, 29 L. Ed. 117, 5 S.Ct. 799.
>
> "It being, then, the right of a party to be protected against a law which violates a constitutional right, whether by its terms or the manner of its enforcement, it is manifest that a decision which denies such protection gives effect to the law, and the decision is reviewable by this court. Wilmington & W. R. Co. v. Alsbrook, 146 U.S. 279, 36 L. ed. 972,

13 Sup. Ct. Rep. 72 (N.C. 1892)" *General Oil Co. v. Crain*, Tenn.1908, supra pages 5-6.

"Prohibition is a distinct suit and the judgment finally disposing of it is a final judgment within the meaning of the Judicial Code . . ." *Mt. Vernon-Woodberry Cotton Duck Co.* v. *Alabama Interstate Power Co.*, Ala.1916, 240 U.S. 30, 31, 60 L. Ed. 507, 510, 36 S.Ct. 234.

The same ruling applies to proceedings for writ of mandamus. *McPherson* v. *Blackmer*, supra page 9; *Detroit & Mackinac Ry. Co.* v. *Michigan Railroad Commission*, supra page 11; *Indiana ex rel. Anderson* v. *Brand*, supra page 4.

"But, as this court has said, 'all judgments and decrees which determine the particular cause' are final in the sense of the statute. Weston v. Charleston, 2 Pet. 449, 463-465, 7 L. ed. 481, 486, 487; Central Transp. Co. v. Pullman's Car Co., 139 U.S. 24, 49, 35 L. ed. 55, 61, 11 Sup. Ct. Rep. 478; Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co., 240 U.S. 30, ante, 507, 36 Sup. Ct. Rep. 234. This view has prevailed through a century of practice in reviewing judgments and decrees dismissing causes for want of jurisdiction or for other reasons not decisive of the merits. And it is settled that a proceeding in mandamus is an independent adversary suit, and a judgment awarding or refusing the writ is a final judgment within the meaning of the statute. Davies v. Corbin, 112 U.S. 36, 40, 28 L. ed. 627, 629, 5 Sup. Ct. Rep. 4; McPherson v. Blackmer, 146 U.S. 1, 24, 36 L. ed. 869, 873, 13 Sup. Ct. Rep. 3; American Exp. Co. v. Michigan (American Exp. Co. v. Maynard), 177 U.S. 404, 406, 44 L. ed. 823, 824, 20 Sup. Ct. Rep. 695." *Detroit & Mackinac R. Co.* v. *Michigan Railroad Commission*, Mich.1916, 240 U.S. 564, 570-571, 60 L. Ed. 802, 807, 36 S.Ct. 424.

See also, *Missouri* v. *Taylor*, Mo.1924, supra (writ of prohibition); *Michigan Central R. Co.* v. *Mix*, Mo. 1929, supra (writ of prohibition); *Chicago & E. I. R. Co.* v. *Industrial Commission*, Ill.1932, supra (writ of

prohibition); *Indiana ex rel. Anderson* v. *Brand*, Ind. 1938, supra (writ of mandamus); *Rescue Army* v. *Municipal Court*, Cal.1947, supra (writ of prohibition); *Young* v. *Ragen*, Ill.1949, supra (writ of habeas corpus); *Hammerstein* v. *Superior Court*, Cal.1951, supra (writ of prohibition); *Pope* v. *Atlantic Coast Line R. Co.*, Ga. 1953, supra (injunction); *Palmer* v. *Ashe*, Pa.1951, supra (writ of habeas corpus); *Madruga* v. *Superior Court*, Cal.1954, supra (write of prohibition).

Since Petitioner cannot, except by applying to this Court for relief, challenge the 21 March 1956 decree of the North Carolina Supreme Court denying the relief sought, this Court must entertain jurisdiction, or Petitioner has no remedy to protect his asserted Constitutional rights, for the North Carolina courts have twice refused to entertain jurisdiction of Petitioner's claims of denials of his Constitutional rights. Is Petitioner to have no protection?

CONCLUSION

For the foregoing reason Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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14 September 1956